

ANNEX GG

FEMA-STATE AGREEMENT

A. PURPOSE

The FEMA-State Agreement states the understandings, commitments, and conditions for assistance under which FEMA disaster assistance shall be provided. This agreement imposes binding obligations on FEMA, States and their Political Subdivisions in the form of conditions for assistance which are legally enforceable. However, such conditions may be modified by a properly executed amendment to the FEMA-State Agreement. No FEMA funding may be authorized or provided to any grantees or other recipients, and authorized by mission assignment until such time as this Agreement for the Presidential declaration has been signed and is fully in effect.

B. CONCEPT OF OPERATIONS

1. Upon the declaration of a major disaster or emergency, the Governor, acting for the State, and the FEMA Regional Director, or his/her designee, acting for the Federal Government, shall execute a FEMA-State Agreement. This Agreement specifies the beginning and the end of the incident period, identifies the type and extent of Federal assistance, and includes any details unique to a current emergency. It also describes the incident period for which assistance will be made available, the type and extent of the Federal assistance to be made available and contains the commitment of the State and Political Subdivisions with respect to the amount of funds to be expended in alleviating damage and suffering caused by a major disaster. This Agreement contains the necessary terms and conditions consistent with the declaration and the provisions of applicable laws, executive orders and regulations. The Governor's authorized representative and the Regional Director or his/her designee may execute subsequent amendments to the Agreement for the same major disaster or emergency. The Federal assistance specified in the Agreement or an amendment is the only assistance eligible for Federal funding or reimbursement under Public Law 93-288, as amended.

2. In the event that funds are to be transferred to the State for disaster relief purposes, the FEMA-State Agreement shall contain, and the State and its political subdivisions shall agree to, the following conditions for assistance:

a. In the event that a State or Political Subdivision violates any of the conditions imposed upon disaster relief assistance under law, this Agreement, or applicable Federal regulations, the Associate Director may notify the State that additional financial assistance for the purpose of the project in connection with which the violation occurred will be withheld until such violation has been corrected.

- b. Provided, however, that if the Associate Director, after such notice to the State, is not satisfied with the corrective measures taken to comply with that notification, the Associate Director will notify the State that further financial assistance will be withheld for that project, or for all or any portion of financial assistance which has or is to be made available to the State or Political Subdivisions for the purpose of disaster relief assistance under the provisions of the Agreement, applicable Federal regulations and the Act.
 - c. The State further agrees that FEMA or state auditors, the Governor's Authorized Representative, the Regional Director, the Associate Director, and the Comptroller General of the United States or their duly authorized representative shall for the purpose of audit and examination have access to any books, documents, papers and records of any recipients of Federal disaster assistance and of any persons or entities which perform any activity which is reimbursed to any extent with Federal disaster assistance funds distributed under the authority of the Act.
- 3. All FEMA-State Agreements shall contain the following conditions for assistance:
 - a. The State agrees on its behalf and on behalf of its political subdivisions and other recipients of Federal disaster assistance, to cooperate with the Federal government in seeking recovery of funds which are expended in alleviating the damages and suffering caused by any declared major disaster or emergency against any party or parties whose acts or omissions may in any way have caused or contributed to the damage or hardship for which Federal assistance is provided pursuant to a Presidential declaration.
 - b. The State will establish and maintain an active State program of non-discrimination in disaster assistance. This program will encompass all State and Political Subdivision actions pursuant to this Agreement.
 - c. The State will establish and maintain a program to assure the State and Political Subdivision recipients of Federal disaster assistance comply with the Department of Housing and Urban Development Consolidated List of Debarred, Suspended and Ineligible Contractors. This program also will encompass all State and local contracts pursuant to this Agreement.
 - d. No member of or delegate to Congress or resident commissions shall be admitted to any share or part of this agreement, or to any benefit to arise thereupon; provided, however, that this provision shall not be construed to extend to any contract made with a corporation for its general benefit.
- 4. As determined necessary by the Associate director, certain typical conditions for assistance may be included in the FEMA-State Agreement. However, some changes in wording may be made to fit the current disaster or emergency. These conditions for assistance are:

a. The State agrees that, as a condition for any Federal loan or grant, the State or that applicant shall evaluate the natural hazards in the areas in which the proceeds of the grants or loans are to be used and shall make appropriate recommendations to mitigate such hazards for Federally-assisted projects. The State further agrees:

(1) To follow up with applicants, within State capabilities, to assure that, as a condition for any grant or loan under the Act, appropriate hazard mitigation actions are taken;

(2) To prepare and submit, not later than 180 days after the declaration, to the Regional Director for concurrence, a hazard mitigation plan or plans for the FEMA designated areas; and

(3) To review and update as necessary disaster mitigation portions of the State Emergency Operations Plan. The Regional Director agrees to make Federal technical advice and assistance available to support the planning efforts and actions. The State understands that future Federal disaster assistance may be curtailed in situations where hazard mitigation plans have not been implemented properly.

b. Within his/her authorities, the Governor shall ensure, through the State agency responsible for regulation of the insurance industry, that insurance companies make full payment of eligible insurance benefits to disaster victims. The State also shall take all responsible steps to ensure that disaster victims are aware of procedures for filing insurance claims, are informed of any State procedures instituted for assisting insured disaster victims, and are aware of their responsibility to repay government assistance which is duplicated by insurance proceeds.

c. The mandatory FEMA-State Agreement language in Number 1 of the conditions for assistance shall, when determined necessary by the Regional director, be amended to address any of the following issues which the Regional Director deems appropriate:

(1) The need for the State to pursue recoveries against responsible parties.

(2) Reimbursements to the federal government from any recoveries from responsible parties.

(3) Review by the Federal government of proposed settlements between the State, its political subdivisions, or other recipients of Federal disaster assistance and any responsible parties.

(4) Assignment to the Federal government of any rights of recovery which the State, its political subdivisions, or any other recipients of Federal disaster assistance might have against any responsible parties.

(5) Intervention by the United States in any action instituted by the State, its political subdivisions, or any other recipients of Federal disaster assistance against any responsible parties.

(6) Other related issues.

d. Since Federal operations and financial responsibility for temporary housing assistance shall not exceed eighteen (18) months from the date of the declaration by the President, the state agrees to accept such responsibility upon expiration of the Federal responsibility.

e. For any program administered by the State involving FEMA funding, the State agrees to establish and maintain an active State program to avoid duplication of Federal benefits in disaster assistance. The State further agrees to take necessary action to recover any FEMA funding administered by the State in those situations where such duplication is reported or appears likely to have occurred.

C. TASK ASSIGNMENTS

1. Governor executes and signs the FEMA-State Agreement.
2. Governor's Authorized Representative executes and signs any needed amendments to the FEMA-state Agreement.
3. State government, working through the Governor's Authorized Representative, meet and maintains the FEMA-state Agreement's understandings, commitments and conditions.

D. AUTHORITIES AND REFERENCES

Code of Federal Regulations, Title 44, Parts 4, 7, 11,
Subpart B, 206.44

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APPENDIX 1
Sample FEMA-State Agreement

On (Date), the President declared that a major disaster exists in the State of West Virginia. This declaration was based on damage resulting from (Disaster) beginning on (Date) and continuing.

This
is the FEMA-State Agreement for this major disaster, designated FEMA-(#)-DR, under the Robert
T.

Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 USC 5121 et seq. ("the Stafford Act"), in accordance with 44 CFR 206.44.

1. No Federal assistance under the Stafford Act shall be approved unless the damage or hardship to be alleviated resulted from the major disaster that took place beginning (Date) and continuing; except that reasonable expenses which were incurred in anticipation of and immediately preceding such event may be eligible.
2. Federal assistance under the Stafford Act and this Agreement shall be limited to the following areas of the State and such additional areas as may be subsequently designated by the Regional Director, FEMA Region III, (Name).

(Counties, Individual Assistance only)

(Counties, Individual and Public Assistance)

All counties in the State of West Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

3. Any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.
4. The Governor has indicated his intent to implement the Individual and Family Grant Program and has agreed that the State will pay its 25 percent share of all grants to individuals and families.
5. Funds are available on a 75 percent Federal cost share basis for hazard mitigation measures which could substantially reduce the risk of future damage, hardship, loss or suffering in any area within the State. Total Federal contributions shall not exceed 15 percent of the estimated aggregate amount of grants to be made (less any associated administrative costs) under this Act for this disaster.
6. Pursuant to 44 CFR 206.208, if direct Federal Assistance is requested by the State, the Governor certifies that the State will; 1) provide without cost to the United States all lands easements and rights of way necessary to accomplish the approved work; 2) Hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claim arising from such work; 3) provide reimbursement to

FEMA for the nonfederal share of the cost of such work; 4) Assist the performing Federal Agency in all support and local jurisdictional matters.

7. Pursuant to Sections 43 and 407 of the Stafford Act, 42 U.S.C. § 5170(b) and 5173, the State agrees to indemnify and hold harmless the United States of America, as well as its agents and employees, for any claims arising from the removal of debris or wreckage for this disaster. The State agrees that debris removal from public and private property will not occur until the landowner signs an unconditional authorization for the removal of debris.
8. Attached and also made a part of this Agreement are:

Exhibit A, a list of State officials authorized to execute certifications and otherwise to act on behalf of the State, and

Exhibit B, General Conditions

9. This Agreement may be amended at any time by written approval of both parties.

Agreed:

Governor

Regional Director

Date: _____

Date: _____

ANNEX GG
EXHIBIT _____

FEDERAL FINANCIAL ASSISTANCE

1. General.

The Director of the Federal Emergency Management Agency, or his/her designated representative, shall make available such amounts as he/she finds necessary for Federal disaster assistance within the limits of funds available from Congressional appropriations for such purposes pursuant to the Act, Executive Order 12148, and applicable Federal regulations.

2. Audit.

- a. The State will maintain a complete listing of locations where each applicant's records, including the original documentation supporting each claim, may be audited by the Federal auditors. The original documentation shall be retained for a period of not less than (3) three years from the date of final payment, except in the case of small project grants (project applications under \$25,000), original documentation shall be retained for a period of not less than (3) three years from the date of submission by the applicant to FEMA through the State of the listing of approved projects showing completion of all work, disposition of any remaining funds, and certification by the applicant as required by 44 CFR 205.

As are necessary, the State shall perform site audits and other reviews of each claim arising from an approved project under this disaster. The state official authorized to make such certification in connection with the performance of audit functions is designated in Exhibit B of this Agreement. Such audits will be performed in accordance with audit guides provided by the FEMA Inspector General and by the General Accounting Office Standards and Office of Management and Budget Uniform Requirements for Grants to States and Local Governments Compliance Supplement.

2. Advances and Letters of Credit. When requested in writing by the Governor or his authorized representative, funds may be advanced to the State for approved individual project applications. The State request will recommend the amount of each advance for project applications. However, the maximum amount to be advanced on each project application will be determined by the Regional Director of the Federal Emergency Management Agency or his designated representative having responsibility for such actions. In requesting advances, the State thereby agrees to the following terms and conditions, which shall govern all such funds advanced:
- 3.

- a. That funds will be deposited in a manner that maintains their identifications as disaster relief funds subject to withdrawal only upon certification of the Governor's Authorized Representative (GAR).
- b. That the funds advanced shall be used solely for the approved project application for which an advance was requested.
- c. That the State will, upon receipt of the advance or advances, immediately advance to the applicant the amount approved by the Regional director or his/her designee for such applicant.
- d. That the State will establish and maintain accounting records, which will be subject to Federal audit, containing the following:
 - (1) The amount of each advance to the State;
 - (2) The amount of funds advanced to each applicant, including the check number, amount, date and individual payee.
- e. That the State will, with respect to its own disaster assistance application, maintain records which identify adequately the source and application of Federal disaster assistance funds for FEMA-supported activities, along with accounting records which are supported by adequate source documentation. In addition, the State will, with respect to the disaster assistance applications of other governmental entities and of eligible private nonprofit entities, require that such grantees maintain records which identify adequately the source and application of Federal disaster assistance funds for FEMA-supported activities, along with accounting records which are supported by adequate documentation.
- f. That the State official responsible for the custody of the funds shall be a bonded official or, if other than a bonded official, assurances of satisfactory surety shall be provided.
- g. That within 90 days of completion of each project for which advances were made from the fund for costs approved for that project, the State will furnish duly executed vouchers (in quadruplicate on United States Government Standard Form 270) accompanied by such itemized and substantiated documentation as the Federal Government may require.
- h. That any and all funds advanced to the State for individual project applications which are in excess of the approved, actual expenditures as accepted by final audit of each project by the State and/or Federal Government shall be refunded by the State by check drawn payable to the Federal Emergency Management Agency. If it becomes evident that timely refunds will not be made by the State, the Federal Emergency Management Agency shall apply the claims collection procedures outlined in title 44, CFR Part 11, Subpart C and further described in the claims

collection regulations of the General Accounting Office and the U.S. Department of Justice.

- i. That in the event that advances to grantees and subgrantees under this Agreement are accomplished by the use of letters of credit, the State commits itself to (a) initiating cash drawdowns only when actually needed for its disbursements, (b) maintenance of adequate accounting controls over letters of credit and advances of Federal funds, (c) timely reporting of cash disbursements and balances as required by the Federal Emergency Management Agency, and (d) the imposition of the same standards of timing and amount upon any secondary recipient organizations, including the furnishings of reports of cash disbursements and balances, with the understanding that failure to adhere to these provisions may cause the obliged portion of the letter of credit to be revoked by the Federal Emergency Management Agency or by the Department of the Treasury.

4. Reimbursements.

- a. If no advance is made, reimbursement to the State for approved costs shall be made upon the presentation by the State of duly executed vouchers in accordance with paragraph 3(g) above.
- b. If actual expenditures approved by the government exceed a partial advance made for an approved project application, the balance not covered by the advance will be paid to the State upon presentation by the State duly executed vouchers in accordance with paragraph 3(g) above.

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EXHIBIT A

STATE CERTIFICATION OFFICERS

- (1) The Governor hereby certifies that Name is the Governor's Authorized Representative empowered to execute on behalf of the State all necessary documents for disaster assistance including certification of applications for public assistance. Name and Name are the Alternate governors' Authorized Representatives and are similarly empowered. Their specimen signatures follow:

GAR

Alternate GAR

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- (2) The Governor's Authorized Representative, who is named above is responsible for State performance of hazard mitigation activities under this Agreement. Further, Name is designated the state Hazard Mitigation Coordinator for the purposes of such hazard mitigation activities.
- (3) The Governor hereby certifies that Name and Name are the State Coordinating Officer and Alternate State Coordinating Officer respectively, who will act in cooperation with the Federal Coordinating officer under this declared major disaster.
- (4) The Governor hereby certifies that Name is the representative of the State authorized to receive donations or loans of surplus property on behalf of the State and to execute certification, agreements, and other necessary documents with regard thereto.
- (5) The Governor hereby certifies that Name is the official of the State authorized to execute compliance reports, carry out compliance reviews and distribute informational material as required by the Federal Emergency Management Agency to assure that all recipients of Federal disaster assistance are in full compliance with FEMA non-discrimination regulations.
- (6) The Governor hereby certifies that Name is the official of the State who will execute compliance reports, carry out compliance reviews and distribute informational material as required by the Federal Emergency Management Agency (FEMA) to assure that all recipients of Federal disaster assistance are in compliance with the General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

ANNEX GG
EXHIBIT B
GENERAL CONDITIONS

FEMA and the State agree to take measures to deliver assistance to individuals, families, and governments as expeditiously as possible, consistent with Federal laws and regulations. To that end, the following terms and conditions apply:

1. Federal assistance will be made available, within the limits of funds available from Congressional appropriations for such purposes, in accordance with the Stafford Act, Executive Orders 12148 and 12673, and applicable regulations found in Title 44 of the Code of Federal Regulations (CFR), as amended, and currently applicable handbooks.
2. If necessary because of limited funds, FEMA will give first priority to assistance for individuals and families, emergency work for protection of public health and safety, and administrative costs for managing the disaster program. Public Assistance recovery claims, hazard mitigation, and fire suppression assistance will be paid when, and if, funds become available and will be provided on a first come, first served basis.
3. Pursuant to the regulations, the State agrees to be the grantee for all grant assistance provided under the Stafford Act. The State agrees to comply with the requirements of applicable regulations found in 44 CFR. The State hereby waives any consultation process under Executive Order 12372 and 44 CFR 4, for grants, loans, or other financial assistance under the Stafford Act for this major disaster.
4. Within his authorities, the Governor shall ensure, through the State agency responsible for regulation of the insurance industry, that insurance companies make full payment of eligible insurance benefits to disaster victims and other recipients of Federal disaster assistance. The State also shall take all responsible steps to ensure that disaster victims are aware of procedures for filing insurance claims, are informed of any State procedures instituted for assisting insured disaster victims. Further, the State shall take all actions necessary and reasonable to ensure that all recipients of Federal disaster assistance are aware of their responsibility to repay government assistance, which is duplicated by insurance proceeds.
5. The State agrees, on its behalf and on behalf of its political subdivisions and other recipients of Federal disaster assistance, to cooperate with the Federal Government in seeking recovery of funds that are expended in alleviating the damages and suffering caused by this major disaster against any party or parties whose intentional acts or omissions caused or contributed to the damage or hardship for which Federal assistance is provided pursuant to the Presidential declaration of this major disaster.
6. The Grantee shall submit financial reports to the FEMA regional office 30 days after the end of the first federal quarter following the initial grant award. (This initial report may be waived by the Disaster Recovery Manager DRM). The Grantee shall submit quarterly financial reports thereafter until the grant ends. Reports are due on January 30, April 30,

July 30, and October 30. The DRM or the Regional Director may stop State drawdowns if quarterly reports are not submitted on a timely basis. A final financial status report is required 90 days after the grant period ends.

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CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 44 CFR Part 17, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment. (See 44 CFR Part 17, Subpart C, 17.300, and Subpart D, 17.400).

- A. The grantee certifies that it will continue to provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - (b) Establishing an ongoing drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a).
 - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
 - (e) Notifying the agency in writing within ten calendar days after receiving notice under subparagraph (d) 2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of

such notices. Notice shall include the identification number(s) of each affected grant;

- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d) (2), with respect to any employee who is so convicted:
 - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a),(b),(c),(d),(e) and f.

- B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with this grant:

Place(s) of Performance:

Organization Name

Disaster Number

Name and Title of Authorized Representative

Signature

Date

ANNEX GG
CERTIFICATION FOR CONTRACTS, GRANTS, LOANS,
AND COOPERATIVE AGREEMENTS

This certification is required by the regulations implementing the New Restrictions on Lobbying, 44 CFR Part 18. The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Name and Title of Authorized Representative

Signature

Date